

DOCKET NO. PHA 23,534A (PHIL06-23534)
SERIAL NO. 09/882,082
PATENT

REMARKS

Claims 1-18, 21-24, 26, and 27 were pending in this application.

Claims 1-4, 8-10, 13-15, 22, 24, 26, and 27 have been rejected.

Claims 5-7, 11, 12, 16-18, 21, and 23 have been allowed.

Claims 2 and 9 have been amended as shown above. Because these amendments place the claims in better condition for allowance or appeal and do not require a new search, these amendments comply with 37 C.F.R. § 1.116.

Claims 1-18, 21-24, 26, and 27 remain pending in this application.

Reconsideration and full allowance of Claims 1-18, 21-24, 26, and 27 are respectfully requested.

I. ALLOWABLE CLAIMS

The Applicants thank the Examiner for the indication that Claims 5-7, 11, 12, 16-18, 21, and 23 are in condition for allowance. These claims have not been amended and therefore remain in condition for allowance.

II. REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1, 2, 4, 8-10, 13, 22, 24, and 27 under U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,473,128 to Berger ("Berger"). The Applicants respectfully traverse this rejection.

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This application is a continuation of U.S. patent application Serial No. 09/191,598 (the "parent application") filed on November 13, 1998. *Berger* has a U.S. filing date of May 21, 1999, which is after the filing date of the parent application.

Berger claims priority to a European patent application filed on May 22, 1998. However, the filing date of the European patent application cannot be used under 35 U.S.C. § 102(e). In particular, the filing date of the European patent application cannot be used because the European application (1) was not an application filed in the United States, (2) was not filed under the treaty defined in 35 U.S.C. § 351(a), and (3) was not filed on or after November 29, 2000. (See M.P.E.P. § 2136).

Based on this, the § 102(e) date of *Berger* is May 21, 1999, which is after the filing date of the parent application. As a result, *Berger* cannot be cited as prior art against this application. Accordingly, the Applicants respectfully request withdrawal of the § 102 rejection and full allowance of Claims 1, 2, 4, 8-10, 13, 22, 24, and 27.

III. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 3, 14, 15, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Berger* in view of U.S. Patent No. 5,832,181 to Wang ("Wang"). The Applicants respectfully traverse this rejection.

As described above, *Berger* cannot be cited as prior art against this application. Accordingly, the Applicants respectfully request withdrawal of the § 103 rejection and full allowance of Claims 3, 14, 15, and 26.

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IV. CONCLUSION

As a result of the foregoing, the Applicants assert that the remaining claims in the application are in condition for allowance and respectfully request an early allowance of such claims.

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SUMMARY

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at wmunck@davismunck.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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